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SUBJECT: THAILAND: NCCC RESIGNATIONS SPUR MOVES TO AMEND CONSTITUTION

REF: BANGKOK 3521

1. (SBU) Summary: The Thaksin administration and the political opposition are both drafting proposals for a constitutional amendment on the selection process for the National Counter Corruption Commission (NCCC), from which all nine National Counter Corruption Commissioners resigned following their convictions for fiscal malfeasance (Reftel). The opposition, led by the Democrat Party (DP), is expected to submit a version that would drop the political parties from the process and add participants from other organizations. In addition to the NCCC, the opposition is proposing this process for selection of the Election Commission and the Constitutional Court. The government's version, which reportedly will limit the political parties participants to the Leader of the Opposition and the President of Parliament, is expected to be submitted to the Parliament over the next several days. Significantly, a powerful, but disaffected faction within the governing Thai Rak Thai (TRT) party is saying that amendment of the Constitution should not be restricted to the article governing selection of the constitutional independent bodies, but should also include revision of articles that have circumscribed the ability of members of Parliament (MP) to change parties. End summary.

CABINET GO-AHEAD FOR AMENDMENT ON NATIONAL COUNTER CORRUPTION COMMISSION

2. (U) The Thaksin administration is expected to shortly submit to the Parliament an amendment on the selection process for the disgraced National Counter Corruption Commission (NCCC), from which all nine National Counter Corruption Commissioners resigned following their recent convictions for fiscal malfeasance. Following the Cabinet's regular Tuesday meeting on May 31, Deputy Prime Minister Wissanu Krea-Ngam had announced that the government agreed to initiate an amendment to Article 297 of the 1997 Constitution that sets forth the composition of the selection committee for the National Counter Corruption Commission. DPM Wissanu said the Government would confine the scope of the amendment to this aspect only. The Council of State is tasked to draft an amendment bill for submission to the National Assembly in the next several days.

The government's proposed selection committee would include:

- President of the Supreme Court of Justice
- President of the Constitutional Court
- President of the Supreme Administrative Court
- 7 State Universities Rectors
- Chairman of the Election Commission of Thailand
- Chairman of the Human Rights Commission
- Ombudsman
- The Auditor-General
- President of the National Assembly
- Leader of the Opposition.

OPPOSITION PROPOSAL EXPECTED TO GO FARTHER

3. (U) The opposition parties (Democrat and Chart Thai) are also expected to submit to Parliament their own proposed constitutional amendments concerning the composition of selection committees for membership on the key "watchdog bodies" -- the Election Commission, the Constitutional Court and the National Counter Corruption Commission. As in the case of the government's submission, the opposition proposal drops the stipulated 5 representatives of political parties from the process, but adds 5 participants selected from among the 99 members of the National Economic and Social Advisory Council (NESAC). (Note: NESAC was created as an independent mechanism by the current 1997 Constitution, Section 89, which states: that "For the purpose of the implementation of this Chapter, the State shall establish the National Economic and Social Council to be charged with the duty to give advice and recommendations to the council of Ministers on economic and social problems. End note) The opposition also proposes adding 4 other members of the selection committee to be drawn from the 86 members of the Assembly of Supreme Judges.

Under this proposal, the new selection committee will

comprise the following members:

- 5 members of the National Economic and Social Advisory Council
- 2 Human Rights Commissioners
- 7 State Universities Rectors
- President of the Supreme Court of Justice
- President of the Constitutional Court
- President of the Supreme Administrative Court
- 4 Supreme Court Judges.

IF THE AMENDMENT PROCESS GOES FORWARD

14. (U) The constitutional amendment process is based on Article 313 of the Constitution, and consists of the following principal steps:

Submission of the Amendment Motion

The Council of Ministers (or the Cabinet), or 1/5 of the 500 MPs in the House of Representatives (i.e., a minimum 100 MPs), or 1/5 of both the combined House and 200-strong Senate (i.e., 140 MPs and Senators altogether) are authorized by the Constitution to propose amendments to the National Assembly (Joint Session of the House and Senate).

Amendment Process:

The motion or draft constitution amendment will be submitted to the National Assembly for three required readings:

First Reading - Voting in the first reading for acceptance in principle of the draft shall be by roll call and open voting, and has to be approved by votes of not less than half of the total number of the existing members of both Houses (not less than 350 votes);

Second Reading - Voting in the second reading for consideration section by section shall be decided by a simple majority of votes; and

Third Reading - Voting in the third reading shall be made after 15-day interval from the second reading and the vote is decided by roll call and open voting, and its approval must be approved by votes of more than one-half of the total number of the existing members of both Houses (or more than 350 votes).

Royal Endorsement

Following approval by the Parliament, the draft constitution will be submitted to the King for Royal endorsement and subsequent inclusion in the Government Gazette before it becomes effective.

IN OPENING CONSTITUTION FOR AMENDMENT SOME MPS SEE AN OPPORTUNITY

15. (U) On May 31, Surapol Fongngarm, Constituency MP from Ubon Ratchathani and a leading member of the Wang Nam Yen Faction of Thai Rak Thai Party (TRT), said that members of his faction, including faction leader and TRT Party Chief Advisor Sanoh Thienghong, had decided that amendment of the current Constitution should not be restricted to the article governing the selection committee for the National Counter Corruption Commission (NCCC) and other constitutional independent bodies. Rather Surapol added, all other "controversial" articles of the 1997 Constitution should be looked at. He listed for consideration the requirement that a candidate must be a member of a political party for at least 90 days prior to election day (Article 107 (4)), and the voting requirements for the submission of no-confidence debates against the Prime Minister (Article 186) and individual ministers (Article 185)). The Wang Nam Yen Faction's move clearly contradicts Prime Minister Thaksin's stated intent to sponsor only an essential constitutional amendment governing the composition of the NCCC selection committee and reflects the faction's chaffing under the restrictions the Constitution place on the ability of faction leaders to engage in political maneuvering and horse trading.

16. (SBU) Comment: While the conundrum brought about by the 1997 Constitution's ill-defined rights and selection formulas for the independent committees can be remedied through some legal fine tuning, the question of amending articles relating to the powers of the members of Parliament is more significant and potentially troubling. The 90-day rule has brought about its intended purpose of keeping factions from switching parties and provided the political stability that the drafters envisioned. This will be the first time that this reform constitution has been opened for amendment. There have been other proposals over the past several years for constitutional amendments, but, with enough general chariness about the possibility that Parliament, public advocacy groups and business interests might seek to change selectively portions to fit their agendas -- precisely the

situation now -- the issue has always dissipated.

BOYCE